

ELLEN F. ROSENBLUM
Attorney General
SHEILA H. POTTER #993485
Deputy Chief Trial Counsel
ANNA M. JOYCE #013112
Solicitor General
Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: Sheila.Potter@doj.state.or.us
Anna.Joyce@doj.state.or.us

Attorneys for State Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**DEANNA L. GEIGER and JANINE M.
NELSON; ROBERT DUEHMIG and
WILLIAM GRIESAR,**

Plaintiffs,

v.

JOHN KITZHABER, in his official capacity
as Governor of Oregon; **ELLEN
ROSENBLUM**, in her official capacity as
Attorney General of Oregon; **JENNIFER
WOODWARD**, in her official capacity as
State Registrar, Center for Health Statistics,
Oregon Health Authority; and **RANDY
WALDRUFF**, in his official capacity as
Multnomah County Assessor,

Defendants.

Case No. 6:13-cv-01834-MC
(Lead Case)

STATE DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO THE
RUMMELL AMENDED COMPLAINT

PAUL RUMMELL and BENJAMIN WEST; LISA CHICKADONZ and CHRISTINE TANNER; BASIC RIGHTS EDUCATION FUND,

Plaintiffs,

v.

JOHN KITZHABER, in his official capacity as Governor of Oregon; **ELLEN ROSENBLUM**, in her official capacity as Attorney General of Oregon; **JENNIFER WOODWARD**, in her official capacity as State Registrar, Center for Health Statistics, Oregon Health Authority; and **RANDY WALDRUFF**, in his official capacity as Multnomah County Assessor,

Defendants.

Case No. 6:13-cv-02256-TC

Defendants John Kitzhaber, Ellen Rosenblum, and Jennifer Woodward (collectively “State Defendants” or “the State”) respond to the Rummell plaintiffs’ allegations stated in their Amended Complaint as set forth below. References to paragraphs in this Answer are references to the numbered paragraphs in the Amended Complaint.

1. State Defendants lack the knowledge sufficient to admit or deny the allegations specific to the named individual plaintiffs in paragraphs 1 – 3. To the extent a response is required, State Defendants deny, solely on the basis of their absence of knowledge necessary to admit, and not for the purpose of specifically disputing the individual plaintiffs’ allegations regarding their commitment, their relationships, or their families.

2. On information and belief, State Defendants admit the allegations in paragraphs 1 and 24 relating to the identity and mission of plaintiff BREF.

3. Statements of the relief sought by plaintiffs (¶¶ 1, 7) require no response, and none is made.

4. State Defendants admit that the Oregon legislature created a legal domestic partnership status, which is different from and is not legally identical to marriage; and they admit that the Oregon constitution and statutes define marriage in a way that prevents same-sex couples from marrying. The remainder of paragraph 2 consists of a mixture of allegations of facts that the State Defendants lack knowledge sufficient to admit or deny (e.g., individual plaintiffs' partnerships, public perception of marriage) and legal conclusions, which require no response. To the extent that it contains allegations of fact requiring a response, the State Defendants deny on the basis of an absence of knowledge.

5. With respect to paragraph 3, State Defendants admit that the Deputy Attorney General for Oregon issued a legal opinion on October 16, 2013, and that on the basis of that opinion, Oregon's Chief Operating Officer issued direction to Oregon state agencies to begin recognizing same-sex marriages validly and legally performed in other states. The direction and the legal opinion are attached to this Answer as Exhibit A, and are thereby incorporated into this Answer; they speak for themselves. State Defendants admit that Oregon law prevents same-sex couples from marrying in Oregon, and that Mr. Jordan's direction does not bind local governments or the courts.

6. Allegations of injury or harm resulting from state law in paragraph 4 are legal conclusions, to which no response is required and none is made.

7. On information and belief, State Defendants admit paragraph 5.

8. Paragraph 6 is a mixture of legal conclusions, which require no response, and factual allegations that the State Defendants lack knowledge sufficient to admit or deny as fact.

9. State Defendants lack the knowledge sufficient to admit or deny the allegations specific to the named individual plaintiffs in paragraphs 8 – 23. To the extent a response is required, State Defendants deny, solely on the basis of their absence of knowledge necessary to

admit, and not for the purpose of specifically disputing the individual plaintiffs' allegations regarding their commitment, their relationships, or their families.

10. In response to paragraph 25, State Defendants admit that Multnomah County began issuing marriage licenses to same-sex couples in 2004, and that a declaratory judgment action was filed in response. State Defendants lack knowledge sufficient to admit or deny activities of BREF alleged in paragraph 25.

11. The allegations in paragraphs 26 – 31 are legal conclusions to which no response is required and none is made.

12. Allegations regarding jurisdiction and venue (§§ 32 – 36) are legal conclusions to which no response is required and none is made. State Defendants do not dispute this Court's jurisdiction.

13. Paragraphs 37 – 38 consist of a mixture of legal conclusions, to which no response is required and none is made, and factual allegations that the State Defendants lack knowledge sufficient to admit or deny.

14. State Defendants admit paragraph 39.

15. With respect to paragraphs 40 – 41, State Defendants admit that Measure 36 passed, but lack knowledge sufficient to admit or deny the thoughts, feelings, or motivations of the individual voters. The statements submitted in support of, and opposition to, Measure 36 are a matter of record and speak for themselves.

16. Paragraphs 42-46 consist of legal conclusions, to which no response is required and none is made. The opinion memorandum referenced in paragraphs 45 – 46 is incorporated as Exhibit A to this Answer.

17. Allegations of injury or harm resulting from state law (§§ 47 – 53) are a mixture of broad factual assertions that the State does not have sufficient knowledge to categorically admit or deny (e.g., whether domestic partners' relationships may be treated with respect in other

states) and legal conclusions (e.g., that the same-sex marriage ban is the legal cause of unspecified persons viewing same-sex relationships as less consequential), to which no response is required and none is made.

18. In response to paragraph 54, State Defendants individually and collectively deny that they, or any one of them, encourage disrespect of, or for, same-sex couples or the children of same-sex parents. The remaining statements in paragraph 54 are, again, a mixture of legal conclusions, to which no response is required and none is made, and broad factual assertions as to multiple unspecified individuals and private entities, which the State cannot categorically admit or deny due to an absence of specific factual knowledge.

19. State Defendants admit that performing same-sex marriages in Oregon would have no adverse effect on existing marriages, and that sexual orientation does not determine an individual's capacity to establish a loving and enduring relationship. State Defendants likewise admit that domestic partnership registration confers many legal protections but not all of the rights, obligations, and privileges associated with marriage. The remainder of paragraphs 55-57 consist of legal conclusions to which no response is required and none is made.

CLAIMS FOR RELIEF

20. State Defendants incorporate and reallege their responses above, in reply to paragraphs 58, 70, and 98.

21. Paragraphs 59 – 69, 71 – 77, 83 – 86, 88, 90 – 97, and 99 – 101 consist of legal conclusions to which no response is required and none is made.

22. In response to paragraph 78, State Defendants individually and collectively deny that their actions have denied same-sex couples dignity or respect, or that the enforcement of state law amounts to or reflects moral disapproval or antipathy toward any person or group of people. The remainder of paragraph 78 consists of legal conclusions to which no response is required and none is made.

23. State Defendants lack the knowledge sufficient to admit or deny the allegations of fact made as to all same-sex couples everywhere in paragraphs 79 – 80.

24. Statements of the relief sought by plaintiffs in paragraph 81 require no response, and none is made.

25. State Defendants admit paragraphs 82 and 87.

26. In response to paragraph 89, State Defendants lack knowledge sufficient to admit or deny the specific allegations but admit that sexual orientation is a fixed characteristic for purposes of the legal analysis in this case.

GENERAL RESPONSES

27. Any factual allegations requiring a response, and not specifically admitted, are denied.

28. State Defendants will not defend the Oregon ban on same-sex marriage in this litigation. Rather, they will take the position in their summary judgment briefing that the ban cannot withstand a federal constitutional challenge under any standard of review. In the meantime, as the State Defendants are legally obligated to enforce the Oregon Constitution's ban on same-sex marriage, they will continue to do so unless and until this Court grants the relief sought by the plaintiffs.

FIRST AFFIRMATIVE DEFENSE

(Eleventh-Amendment Immunity Against Money Damages)

29. To the extent plaintiffs seek money damages against the State, any such claims fail, as State Defendants are immune from claims for damages under the doctrine of Eleventh-Amendment Immunity.

DATED February 20, 2014.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Sheila H. Potter
SHEILA H. POTTER #993485
Deputy Chief Trial Counsel
ANNA M. JOYCE #013112
Solicitor General
Trial Attorneys
sheila.potter@doj.state.or.us
anna.joyce@doj.state.or.us
Of Attorneys for State Defendants